

ADEPT
Legal Commentaries

April 2005

Activity of the Parliament on April 11-15, 2005

20 April 2005

The Parliament has started its usual activity regarding examination of draft legislative documents, with sittings taking place under a calm atmosphere. Only talks on drafts related to the structure of the cabinet of ministers and live broadcasting of plenary sittings provoked ardent debates among lawmakers, which were calmed down through a separate voting.

I. Law for amendment of the law on executive

Commentary by ADEPT: The Moldovan president unveiled this initiative in the Parliament with a couple of days after introducing the new prime minister to lawmakers and proposing the cardinal reformation of the cabinet of ministers and central public administration authorities.

According to the new structure, the cabinet of ministers will comprise 15 ministries:

- Economics and Trade Ministry;
- Ministry of Foreign Affairs and European Integration;
- Ministry of Interior Affairs;
- Defence Ministry;
- Finance Ministry;
- Ministry of Transportation and Road Management;
- Ministry of Environment and Natural Resources;
- Justice Ministry;
- Ministry of Information Development;
- Reintegration Ministry;
- Ministry of Industry and Infrastructure;
- Ministry of Agriculture and Food Industry;
- Ministry of Education, Youth and Sport;
- Ministry of Health and Social Protection;
- Ministry of Culture and Tourism;

Also, the cabinet will comprise other central administrative bodies such as:

- Centre for the Struggle Against Economic Crimes and Corruption;
- Licence Chamber;

- Standardization and Metrology Service;
- Customs Service;
- Border Guard Service;
- National Bureau for Statistics;
- National Bureau for Migration;
- Bureau of Inter-Ethnic Relations;
- Moldova-Vin Agri-Industrial Agency;
- Moldsilva Agency for Forestry;
- Agency for Land Relations and Cadastre;
- Agency for Regional Development;
- Agency for Material Resources, Public Acquisitions and Aid.

The law adopted by the Parliament does not establish the hierarchy of these structures, but available reports say that the central executive administration would correspond to the following scheme: ministry - national bureau (centre/ chamber) - service - agency. No concrete subordination is indicated.

Comparing this structure of executive with the one indicated by the Moldovan president to lawmakers, we can observe some differences since the chief of state proposed maximum 17 ministries instead of the 16 ministries and 14 departments in the Tarlev-I cabinet. It was presumed that departments would disappear as central administrative institutions and ministries would take over their tasks. Opposition lawmakers indicated this issue, and described this reform as insufficient and incapable to fulfil the tasks established for the next four years.

II. Law on live broadcast of plenary sittings of the Parliament

Commentary by ADEPT: Albeit it seems that they are interested the most in solving this problem, not all the lawmakers shared the same opinion regarding the proposal of the Christian Democratic People's Party (PPCD) to ensure the live broadcasting of plenary sittings. They invoked economic and political reasons against this idea, saying even that "TV watchers would not understand what is discussing there" and "the rating of these programmes would be null."

The main arguments in favour of this initiative were based on experience of European countries and need to ensure the information of public. It was highlighted that "the price is not important" for accomplishment of these goals, no matter how high it is.

It is worth to underline that parliamentarians did not indicate any financial sources to cover these amendments, nor they established any date for implementation of these amendments. As a result, if the law is published, its accurate implementation could be demanded immediately after its appearance in *Monitorul Oficial*.

III. International documents on activity of GUUAM

Commentary by ADEPT: Chisinau will host on April 21-22 the GUUAM summit and the Parliament has urgently ratified several international documents in this regard:

1. Yalta Chart of GUUAM

The chart is the key juridical document on constitution of the organisation, named on basis of first letters of founding states: Georgia, Ukraine, Uzbekistan, Azerbaijan, and Moldova.

The initiative to create this association of states was launched in the mid-1990s. Later, the GUUAM leaders signed three political declarations - on October 10, 1997 in Strasbourg, on April 24, 1999 in Washington, and on September 6, 2000 in New York, so that GUUAM became a regional initiative aimed to promote the cooperation on European and regional security matters, in particular, within the OSCE.

Moldova joined this initiative to implement concrete projects on facilitation of trade and development of Euro-Asian transportation networks, as well as border security, struggle against terrorism, organised crime, and illegal trafficking in drugs and human beings. The United States and European Union provide political and financial assistance for cooperation within GUUAM.

According to the GUUAM Chart, this organisation has an open nature, being created in compliance with universally recognised international law norms and principles and key cooperation sectors: economy, science, technologies and environment, infrastructure of transports, energy, telecommunications, investments and finances, humanitarian sector, culture, education, mass media, tourism, and youth exchange.

The annual meeting of chiefs of state is the supreme body of GUUAM, while the member states hold the rotating chairmanship in this organisation in alphabetic order.

The meetings of chiefs of state pass decisions on key directions of political, economic and humanitarian cooperation within GUUAM; creation of specialized bodies of GUUAM; coordination of stances regarding current issues of common interest of international life.

The sessions of foreign ministers which takes place, as a rule, twice a year is the executive body of GUUAM. The sessions of foreign ministers examine problems related to implementation of agreements within GUUAM and draft proposals on development and continued deepening of GUUAM cooperation for examination at meetings of chiefs of state.

The Committee of National Coordinators (CNC), which comprises national coordinators named by foreign ministers and by one on behalf of every member state, is the task force of GUUAM. CNC coordinates the activity between GUUAM-member states, prepares the meetings of chiefs of state and sessions of foreign ministers. CNC holds sittings every quarter, while the member states host them in consecutive order.

2. GUUAM agreement on creation of free trade zone

The agreement aims to create a free trade zone to cover most of commercial exchanges between Moldova and GUUAM-member states. The key objectives of this agreement comprise among others:

- promotion of mutual trade through expansion, development of economic relations, improvement of living standards and work conditions, enhanced productivity and financial stability;
- insurance of conditions for a loyal commercial competition between sides;
- participation in elimination of tariff and non-tariff obstacles on way of trade, harmonious development, and trade expansion in the region;
- creation of premises needed for development of juridical framework, multilateral cooperation and collaboration in different sectors;
- abolition of all customs duties for importation, exportation, and others with similar effects;
- creation of a predictable and stable juridical framework on development of multilateral commercial-economic relations;
- guaranteeing of free transit;
- protection of intellectual property rights;
- regulation of introduction and implementation of compensating anti-dumping and safeguard measures in line with the World Trade Organisation requirements;
- strict delimitation of terms and cases for use of commercial protection techniques, as well as the mechanism for their use;
- no indirect taxes and fees will be in effect for goods exported from customs territory of a signatory side to customs territory of another party.

3. Agreement on creation of the GUUAM Information Office

The GUUAM Information Office will be the secretariat and information centre of GUUAM. The office aims at information support of the GUUAM National Coordinators, state and nongovernmental structures of member countries for accomplishment of an economic, political, cultural-humanitarian cooperation.

The spending estimate for the GUUAM Information Office in 2004 was established in the amount of 90,610 dollars. Thus, every member pays 18,122 dollars (of which 8,240 dollars is the initial sum paid once in three years, and 9,882 dollars is the permanent amount paid every year).

Creation and adequate functioning of the Information Office would allow a deeper cooperation between member states for accomplishment and implementation of the GUUAM Trade and Transportation Facilitation Project.

IV. Draft law on ecological agriculture

Commentary by ADEPT: The law adopted by the Parliament in the first lecture aims to regulate the social relations regarding ecological agriculture and use of synthesis chemical products, as well as sale of vegetal and animal products:

- products for human consumption made from one or more vegetal or animal ingredients;
- fodder and raw materials;
- unprocessed primary animal and vegetal products;
- processed animal and vegetal products.

The law establishes key notions such as:

- ecological agriculture - agriculture based on respect for principles which ensure the creation of a balanced and sustainable agri-ecosystem without use of polluting (synthetic) chemical substances under the shape of mineral fertilizers and pesticides for protection of plants prohibited by standards of ecological agri-foods for the entire cycle of agri-food production;
- ecological production - agri-food products obtained, stored and processed without use of synthesis chemical substances, in compliance with ecological production rules established through this law, with respect for national and international standards in this sector, and certified in line with rules;
- genetically modified organisms and their derivatives - organisms artificially obtained through techniques of modification of genetic material through reproduction/recombination, except for those obtained through conjugation, transduction and hybridization, etc.

Following are the key principles of ecological agriculture:

- achievement of some sustainable, diversified and balanced agricultural systems which protect the natural resources, health and lives of consumers;
- integrated approach of policy and actions at national and local levels, adjusted to the potential and limits of capacities of soil;
- non-use of any polluting technologies and restrictive regulation of use of polluting chemical means and destructive agricultural practices;
- protection and enhanced diversity through choice of sorts of crops and species, and methods of breeding of animals which can encourage the adjustment of ecological agriculture to natural limits of field;
- use of modern technologies for crops and animal breeding, technologies which would comply with requirements of species, sorts and breeds;
- continued maintenance and improvement of natural fertility of soil, and integration of plant production system and animal breeding system, etc.

V. Title VIII of the Fiscal Code: "Taxes for natural resources"

Commentary by ADEPT: The legislation regulating the rights and conditions for the use of natural resources comprises several legislative documents: code of waters; code of subsoil; forest code; law on natural resources. These laws establish that the natural resources are used for a pay to the budget. The state budget laws stipulated the taxes for use of natural resources until now. The draft Title VIII on taxes for natural resources of the Fiscal Code establishes the type of taxes, quotas, mode of pay, and facilities. Title VIII of the Fiscal Code will establish the notions, object and subject of taxes, concrete quotas of taxes, and terms for their payment to the budget.

It is also proposed a wider category of taxpayers who collect water, inclusion of public and non-commercial organisations, notaries, bars, foreign individuals and businesses as subjects of taxation.

Also, it is planned that the current mode of calculation of water collection taxes be simplified in dependence of limits established by the Republican Concern Apele Moldovei. Also, it is proposed the exemption of certain categories of payers in agriculture sector, farms which have no pumping system for irrigation, and fish growing taxpayers from water tax. The mode of calculation of taxes for geological prospecting and geological exploitation is significantly simplified, as fixed quotas of these taxes and their payment are established in the size calculated before start of these works.

Taking into account the fact that petrol and natural gas are extracted in the districts of Cahul and Vulcanesti, a tax for their extraction in the size of 20 percent of the cost of one unit of extracted raw material is proposed to be established.

Activity of the Parliament on April 18-22, 2005

28 April 2005

The parliament held a special sitting in this period and examined the governing programme and entire list of the cabinet of ministers, unveiled by the nominee prime minister. Representatives of all the parliamentary factions spoke out after presentation of the programme, with most of them criticizing the activity of the precedent executive and proposed programme. None of lawmakers voted the cabinet, except for the Communist faction, though the proposed programme comprised ideas and promises from electoral programmes of parties which succeeded to the Parliament. Experts highlight that the situation is clear in case of the majority opposition faction, Our Moldova Alliance, since it participated neither in election of speaker, nor of the chief of state. As for representatives of the "constructive" opposition, they did not vote because of being afraid to assume responsibility for governing, rather than for not getting any post in the cabinet. This way, the factions representing the Christian Democratic People's Party and Democratic Party of Moldova reserved the right to criticize the executive's activity and to use critical messages in the future electoral campaigns for the Chisinau City Hall and for general local elections after two years. On the other hand, the election of the chief of state, creation of political alliances aimed to promote the policy on internal consolidation and European integration of the country already mean responsibility for governing, while justification of refusal to give the trust vote through absence of some proposed ad-hoc chapters seems not to be based on objective criteria.

Anyway, the executive was invested in office, and only the post of first deputy prime minister remains vacant in the new cabinet, a situation similar to the one registered in 2001, when the president appointed Communist parliamentarian Vasile Iovv to this office.

Beside political issues, the Parliament examined several draft laws which remained from the precedent period, with some of them raising a certain interest.

I. Law for modification of the Penal Code

Commentary by ADEPT: At present, Article 264 of the Penal Code stipulates the "imprudent causing of serious material damages" as part of offence. Taking into account the cost of transportation units and parts for them, the material damage resulted after traffic accidents is larger than the big damages (10,000 lei) in most of cases. Police bodies have to file penal cases, though the damage is covered.

Also, Article 124 of the Code of Administrative Contraventions stipulates punishment for "violation of traffic rules by motorists, so that the transportation means were seriously deteriorated."

The Parliament decided to exclude this sentence from the Penal Code, decriminalising the actions which will be object of civil, insurance relations, and of Contraventional Code in future.

II. Draft law on status of military

Commentary by ADEPT: The law adopted by the Parliament in the first lecture aims to ensure the necessary legislative framework for an uniform regulation of general aspects of rights and obligations, juridical and social protection, military service of the Armed Forces military. Also, the law will indicate the aspects related to social and juridical protection of military and members of their families, citizens who attend military training.

The law will cover the military who serve in the Armed Forces; reserve military of the Armed Forces; members of families of serving military.

The law will indicate the key aspects of rights and general obligations of military; financial rights for military employed on basis of a contract; employment in military service through a contract; appointment and dismissal of military through a contract; transfer of military; mode of awarding, retrograding and restoration of military rankings; relief from military service, etc.

The law proposes new notions: enrollment of citizens on basis of a contract; conditions for awarding of military rankings to military employed through a contract; monthly pay of military employed through a contract; offences which discredit the title of military of Armed Forces, etc.

III. Draft law for modification of legislative documents on empowerment of the Labour Inspection with sanctioning rights and competences

Commentary by ADEPT: The draft adopted in the first lecture after controversial debates proposes higher sanctions for violation of labour protection legislation and introduction of a new article in the Code of Administrative Contraventions - violation of legislation on employment and social protection of job seekers.

Also, the law proposes to empower the Labour Inspection with the right to examine administrative contraventions related to labour protection.

The government motivated the need to adopt this law through the fact that inspectors registered more than 42,000 violations of different legal provisions in 2004, while most of them envisage:

- use of labour force without an individual labour contract stipulated by legislation;
- violation of legal work time;
- employment with a lower salary than the minimum pay stipulated by legislation;
- failure to pay compensations;
- salary arrears for two and more months;

- employment of people without professional training and training in labour protection matters;
- use of improvised work equipment without protection devices.

Statistics also confirm the complicated situation in this sector, as about 600 salary earners are hurt a year because of violation of different normative documents on labour protection (40-50 persons are hurt to death). About 20,000 salary earners are employed under work conditions which unfit the hygienic and sanitary norms. As many as 1,527 high ranking officials received administrative sanctions for violation of labour legislation and other normative documents in seven months of 2004.

The current size of administrative sanctions for violations does not direct to respect for labour law norms. Thus, it was established after repeated controls that the business respected the legislation nor after receiving administrative sanctions. Higher administrative fines and empowerment of the Labour Inspection with the right to apply them were proposed from these reasons.

Many lawmakers opposed this draft, warning that the existing practice of continued sanctioning does not have efficient results, with controls being abusive in most of cases or finishing with extortion of facilities for inspectors.

IV. Draft law on higher sanctions for violation of legislation on sale of alcohol production

Commentary by ADEPT: The draft adopted in the first lecture calls for severer administrative sanctions for violation of legislation in this sector and introduction of sanctions for sale of alcohol drinks in rooms without necessary equipment and conditions for storage and sale; in booths, pavilions, and other trade facilities which do not have a commercial space of at least 20 square metres; in educational, medical institutions; in hostels for students and schoolchildren; in enterprises and building and repairing sites; in commercial enterprises near kindergartens and educational institutions for children; in sport buildings and their adjacent fields; in coffee houses for children; trade facilities for children and teenagers; in headquarters of public authorities, except for public food facilities; near religious buildings; in cemeteries; penitentiaries, military units; in public transportation enterprises;

Violation of these restrictions will bring fines of 200-300 minimum salaries for citizens and 500-800 minimum salaries for functionaries, while the products which represent the object of contravention will be confiscated.

Activity of the Parliament on April 25-29, 2005

5 May 2005

The Parliament has examined several draft legislative documents in this period, with most of them being part of the package of drafts submitted to the precedent legislature. Also, the legislature adopted several complex drafts, including the new leasing law aimed to introduce a new regulation framework in this sector.

Some laws on activity of investment funds provoked controversial talks, with the need to review their functioning being earlier highlighted more than once.

A draft seeking the exemption of imports of equipment for construction of energy plants in the southern and northern regions of Moldova from certain taxes also provoked controversial discussions.

I. The leasing law

Commentary by ADEPT: The law adopted by Parliament aims to establish juridical bases for regulation of leasing relations, object of leasing, participants in leasing operations, their obligations and responsibilities.

The law explains a number of notions, including the following:

leasing - an ensemble of relations established for and by a leasing contract;

leasing contract - a contract through which one side called locator pledges at the request of another side named lodger to ensure possession and temporary use of goods purchased or produced by locator, in exchange for a periodical payment (leasing instalments), and to respect the right to option of lodger to buy the estate when the contract runs off, to prolong the leasing contract, or to stop the contract-based relations;

leasing instalment - a periodical sum paid by lodger to locator which represents the share from the original value of leased goods and leasing interest (in case of financial leasing) or share of payment calculated in line with normative documents in effect, and a benefit established by contracting sides (in case of operational leasing).

The law defines several types of leasing:

financial leasing - any leasing operation which complies with at least one of the following conditions: - most of risks and benefits afferent to the right to property on the asset which is object of leasing are transferred to lodger when the leasing contract is signed; - the sum of leasing instalments represents at least 90 percent of the original value of leased goods; - leasing contract stipulates express the transfer of the right to property on estate which is object of leasing to lodger when the contract runs off; - the leasing period exceeds 75 percent of the useful functioning duration of estate which is object of leasing;

operational leasing - any leasing operation which does not meet any conditions of the financial leasing contract;

barter-leasing - leasing operation within which the lodger pays the leasing instalments through his goods;

compensatory leasing - leasing operation through which the locator receives the proposed goods with equipment which is object of leasing on account of leasing instalments;

consumer leasing - leasing operation within which the lodger has the quality of consumer explained by legislation on protection of consumer;

international leasing - leasing operation with participation of a locator or lodger who is not a resident of Moldova.

Any chattels or real estate can be object of leasing, except for the following categories of goods:

- goods withdrawn from civil circuit or whose circulation is limited by law;
- consumer goods;
- objects of intellectual property which cannot be ceded.

Under the law, the leasing contract must establish at least the following elements: - contracting sides; - description of estate which is object of the leasing contract; - original value of the asset in case of financial leasing contract; - overall value of the contract; - value of leasing instalments and their payment term; - term of the contract; - clause on the right of lodger to option to buy the estate, to prolong the leasing contract, or to stop the contract-based relations; - convention of parties regarding the insurance of the estate which is object of leasing (insurance of the asset which is object of leasing is mandatory only in case of consumer leasing).

The law also establishes:

- The rights, obligations and responsibilities of the sides. Stimulation of leasing and protection of rights;
- measures to encourage the leasing;
- measures to protect the patrimonial rights;
- methods to claim the asset, etc.

Adoption and enforcement of the new law aims to encourage this business sector and individuals and enterprises to buy goods. The law will encourage the deals with goods which can be object of leasing, so that to establish an intensive circuit of values, development of different production processes, and growth of internal trade.

II. The law for modification of the law on investment funds

Commentary by ADEPT: The law adopted after controversial debates comprises a number of norms aimed to restore the normal activity of investment funds, as well as the control of shareholders on functioning of funds.

The law establishes the following:

1. The information about general meetings of shareholders of investment funds, with official announcement about reorganisation, must be released through radio and television programmes of national audience
2. The non-mutual investment funds will turn into other types of investment funds; - or will give up the quality of professional participant in the securities market;
3. The non-mutual investment fund which will approve one of the procedures mentioned above at the general meeting of shareholders will have to receive applications for redemption of shares for the price approved by general meeting of shareholders, but not lower than 50 percent of the nominal value or value established when a share was placed.

If not, these funds will self-close in line with a decision of the meeting of shareholders. The law obliges the executive and the National Commission for Securities to approve a regulation on redemption of shares of reorganising non-mutual investment funds in limited terms.

III. The law for modification and completion of the law on securities market

Commentary by ADEPT: This law obliges the fiduciary companies to undertake a series of actions till the end of this year, including:

- to adjust the constitution documents to the Civil Code, law on securities market, and normative documents of the National Commission for Securities regarding the fiduciary management of investments;
- to inform management founders through a recommended letters about state of their accounts, and to propose them amendments and completions to existing trust contracts through an additional document, in order to comply with the type-contract approved by the National Commission for Securities.

The fiduciary companies will be lifted from their licences and will be closed up, if they violate these provisions.

Also, the fiduciary companies were told not to sell the assets of their clients or to vote for sale or taxation of assets of joint stock societies in which they represent the interests of founders of fiduciary management, as long as the new norms are not implemented.

IV. Law on importation of equipment for construction of energy plants under preferential conditions

Commentary by ADEPT: The law adopted by Parliament exempts the installations, equipment, materials and generating sets imported for construction of energy plants of about 450 MW each near the village of Burlaceni, in Cahul district, and near the Balti municipality, from value-added tax in 2005-2007.

It is expected that these facilities speed up the construction works, reduce the cost price, and lower the electricity tariffs. Implementation of these investments projects will create new jobs, will compensate the deficit of generating power of the southern and northern energy stations, will boost the own electricity generating capacities of Moldova, and will consolidate the energy security of the country.

Many representatives of opposition accused the executive that the investment companies had not been selected on a transparent enough way and this fact throws doubts on transparency of this business in general. As a result, the competent authorities were told to present soon an additional information in this regard.

V. The law for modification and completion of the Code on Administrative Contraventions

Commentary by ADEPT: The Code on Contraventions was completed with several new articles and regulations regarding:

1. Violation of rules of the state border regime and state border crossing regime (breaches requiring fines between 10 and 20 minimum salaries).
2. Destruction or deterioration of border signs (breached requiring fines of between 50 and 75 minimum salaries).
3. Assignment of water objectives for separate use, with violation of legal provisions, use of water objectives without a state title for separate use or use of water without a special authorisation (breaches requiring fines of 300 minimum salaries).
4. Violation of legislation on market of oil products (breaches requiring fines of 150-700 minimum salaries).